

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 957 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : YES
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

INDRAPALSINH P. CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

MR BP TANNA for Petitioner

MS MANISHA LAVKUMAR ASTT GOVT PLEADER for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 3, 4

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 17/11/2000

ORAL JUDGEMENT

Mr.B.P.Tanna, learned Senior Advocate on behalf
of the petitioner and Ms.Manisha Lavkumar, learned AGP
appearing on behalf of the respondents.

#. In the present Special Civil Application, wherein,

notice has been issued making it returnable on 24th February, 1993 by order dated 11th February, 1993 and at the same time, by way of interim order, it was also directed that One post of Junior Clerk shall be kept vacant under respondent No.3, till then. Subsequently, RULE was issued by this Court making it returnable on 29th March, 1993 and earlier interim relief was directed to continue by order dated 24th February, 1993.

#. The brief facts giving rise to the present petition are as under :-

The petitioner's father worked for more than 22 years under Shri Madhyamik Shala, Sanjeli, which was run by the respondent No.3. The father of the petitioner died due to cancer on 18th September, 1985. The petitioner who had passed SSC and studying in T.Y.BA at that time and the petitioner being the elder son of the deceased, applied for the post of Junior Clerk on compassionate ground by filling up necessary form. The petitioner relied upon Resolution No.3 dated 22nd December, 1988 passed by the respondent No.3, whereby the it was unanimously accepted the genuine request of the petitioner and recommended his case for compassionate appointment. By letter dated 23rd November, 1990 the Head Master of Shri Madhyamik Shala, Sanjeli requested the respondent No.4 to recommend the case of the petitioner to respondent No.2 and to give compassionate appointment to the petitioner. The petitioner hopefully waited for a favourable compassionate appointment. However, all of sudden, on 29th January, 1992 the petitioner received communication interalia stating that his father died on 18th September, 1985 and dependent of such employee who died on or after 4th July, 1988 is only entitled to the benefit of compassionate appointment and therefore, he is not entitled to benefit of compassionate appointment. According to the petitioner, the said decision which has been taken by the respondents on account of wrong interpretation of resolution which is not permissible.

#. Mr.B.P.Tanna, learned Senior Advocate further submitted that the respondent Government in Education Department has taken a decision to give compassionate appointment to persons whose immediate relatives have died while in service. The Government decided to give this benefit for five years immediately after the death of immediate relative. This would mean that an application for compassionate appointment should be made within five years after the death of the immediate

relative. The Government further clarified on 30th January, 1989 that the Resolution on subject came into force on 4th July, 1988 and persons, whose immediate relatives died between 4th July, 1983 and 4th July, 1988 would be getting above benefit. The case of the petitioner is covered by the aforesaid interpretation but all of sudden, clarification dated 30th January, 1989 came to be cancelled and a new concept in the history of compassionate appoints sought to be implemented and the petitioner is directly become victim of such illegal change in the scheme. Now the Government has come out with a clarification that persons, whose immediate relatives died on 4th July, 1988 or thereafter would be entitled to such benefit. The said policy is violative of Article 14 and 16 of the Constitution inasmuch as it devices the categories of employees who will get this benefit. It is also submitted that if the Government intends to act sympathetically, it should give the such benefit to all and there is no justification in fixing dates like between 4-7-83 and 4-7-88 and thereafter again with effect from 4-7-88 and thereafter. Mr.Tanna also submitted that the Government has not modified the circular or resolution, but only interpretation has been wrongly done which resulted into denial of such benefit of compassionate appointment to the petitioner. It is further submitted that due to such wrong interpretation, persons whose immediate relatives died prior to 4th July, 1988 could not be given benefit of compassionate appointment. Mr.Tanna also submitted that by letter dated 29th January, 1992, such wrong interpretation has resulted into rejection of the claim of the petitioner and it was pointed to the petitioner that his father died on 18th September, 1985 meaning thereby prior to 4th July, 1988 and this benefit is available only to the persons whose immediate relative died on 4th July, 1988 or thereafter. Therefore, according to the petitioner request of the petitioner has been rejected arbitrarily and in a mechanical manner. Mr.Tanna has also relied upon the decision of this Court in Special Civil Application No.5365, 5515, 6975/92 decided on 4th July, 1992 [Coram : S.D.Shah, J.]. Mr.Tanna has also submitted that this very circular has been examined by this Court and also this Court has examined wrong interpretation which was advanced by the State Government and ultimately, after consideration these all aspects of the Government Resolution dated 4th July, 1988, relevant paragraphs 14 to 16 are reproduced as under :-

"14. From the aforesaid observations it becomes clear that the policy underlying the

Government Resolution is to be ascertained first, and if the intention of the Government was to extend the benefit of appointment on compassionate grounds to the dependents of the deceased member of teaching or non teaching staff of secondary or Higher Secondary schools it will not be just and proper to read the Government resolution as one operative from July 4, 1988 and as one applicable to only those employees who have expired subsequent to July 4, 1988. Accepting such an interpretation would, in my opinion, render number of dependents ineligible atleast for consideration for appointment on compassionate grounds. All the dependents of those employees who have expired prior to July 4, 1988 will be rendered ineligible despite stipulation in the resolution itself that the dependents of the deceased employees can apply for appointment on compassionate ground within a period of five years from the date of death of the employees. In substance, the resolution retroacts and there is no need to curtail such retroactive operation as it achieves the wholesome underlying object of the scheme.

15. The right of dependents of deceased employees for appointment on compassionate ground is now well recognised by the decision of the Supreme Court in the case of SMT SUSMA GOSAI VS. UNION OF INDIA reported in AIR 1989 SC 1976. In the case before the Supreme Court in fact the claim for appointment on compassionate grounds was not seriously disputed. In fact, there was unusual delay in processing the claim. The widow of the deceased employee was the claimant and immediately after the death of her husband she was called for written test and later on for interview. She, in fact, passed the trade test. However, she was not appointed, she was denied the appointment on the ground that the appointment of ladies in the establishment was prohibited and that she even could not be accommodated in other department. The High Court dismissed the writ petition and in appeal before the Supreme Court while granting the appeal Justice K. Jagannatha Shetty speaking for the Court, observed that :

"THE PURPOSE OF PROVIDING APPOINTMENT ON COMPASSIONATE GROUNDS IS TO MITIGATE THE HARDSHIP DUE TO THE DEATH OF BREAD-WINNER IN THE FAMILY.

SUCH APPOINTMENT SHOULD, THEREFORE, BE PROVIDED IMMEDIATELY TO REDEEM THE FAMILY IN DISTRESS".

In the case of SMT. KAMALA GAIND VS. STATE OF PUNJAB reported in 1990 (Supp.) SCC 800 while examining the scheme providing job to one of the members of the family of a public officer who was killed by terrorist the court consistent with the scheme even applied underlying concept of Articles 14 and 16 of the Constitution of India and directed suitable post to be provided to the son of the appellant. Though the said case stands on peculiar situation, and peculiar scheme framed by the Punjab Government, it can be said that the right of being considered for appointment on compassionate grounds on satisfying all the conditions of the Government Policy is now well accepted. Similarly, in the case of SMT PHOLWATI VS. UNION OF INDIA reported in AIR 1991 SC 469 the Supreme Court issued directions to the Central Government to take immediate steps for employing second son of appellant in suitable post commensurate with the educational qualifications by following its earlier judgment in the case of Smt. Susma Gosai (Supra. It, thus, becomes clear that in appropriate cases where the death of employee in Government Service in harness brings about a situation of rendering his family, i.e. his widow, son or unmarried daughter in helpless and/or destitute condition there is obligation on the part of the State Government to look back upon the family of the deceased employee and to consider the claim of such family member who is otherwise eligible for appointment on compassionate grounds. The State may prescribe terms and conditions subject to which such appointment on compassionate grounds can be given. It may examine whether the claimant genuinely needed appointment on compassionate grounds failing which the entire family would be rendered helpless, hopeless and destitute. It can also see that only in genuine and exceptional cases such right is recognised and that the appointment on compassionate grounds in Government service may not become a parallel source of recruitment. But at the same time, it can not run away from such obligation when family of its own employee is rendered helpless and destitute. Consistent with the aforesaid principles if the policy underlying the

Government Resolution, dated July 4, 1988 is interpreted and applied reasonably I have no manner of doubt that the State Government intended to extend its benefit to the dependents of the employees who have died within a period of five years.

16. In view of the aforesaid interpretation of the Government Resolution, dated July 4, 1988 the orders passed by the respondents can not stand and the petitions of the petitioners shall have to be allowed with a direction to the respondents to consider afresh the claims of the petitioners for appointment on compassionate grounds."

#. Mr. Tanna, learned advocate for the petitioner has also relied a decision of this Court in case of ARVINDKUMAR N. BHATT VS. POLICE COMMISSIONER OF AHMEDABAD rendered in Special Civil Application No.5330 of 1991 dated 21st July, 2000.

Learned advocate Mr. Tanna has relied upon two decisions of this Court in case of Nisar Ahmed A. Miya versus State of Gujarat and others reported in 1995 (2) GLH 546. In the said decision, this Court (Coram:Rajesh Balia,J.) has considered the vary question of compassionate appointment and has observed that there should be no delay in such appointment on compassionate ground. It has also been observed that if such appointments are delayed for indefinite period on the specious ground of administrative exigencies, the very purpose of such policy will fail. In the said decision, this Court has considered the decision of the apex court in case of Smt. Sushma Gosain and Others versus Union of India and Ors. reported in AIR 1989 SC 1976 wherein the apex court has observed as under:

"We consider that it must be stated unequivocally that in all claims for appointments on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

After considering the decision of the apex court, this court has allowed the petition and has directed the respondents therein to appoint the petitioner Nisar Ahmed Abdul Miya on the post to which he has been found eligible to the appointment within one month from the date of receipt of that order.

He has also relied upon the decision of this court in case of Jagdishbhai Amrutbhai Patel versus Divisional Controller reported in 1998 (1) GCD 306 (Guj). In the said decision, this court (Coram:M.R.Callan,J.) has considered the very question of compassionate appointment. Application of the petitioner has been rejected on the technical ground of delay. The petitioner was minor at the time of death of his father. The petitioner applied after passing S.S.C. Examination. There was delay of ten months. In the said decision, this court has made certain observations as under:

"The compassion in such cases is the very essence by which the scheme of giving appointment has been introduced and if such cases are rejected with a computer machine application, oblivious of an orientation of compassion, the whole purpose of introducing such scheme would stand thwarted and defeated. Therefore, this Court being fully conscious with the proposition of law laid down in this regard by the Supreme Court that the procedure must be followed and the Court should not be swayed by sympathy, I find that the time limit of one year cannot be applied with that rigour to put an end to the consideration for appointment on compassionate ground in every case in which a ward of deceased employee fails to move application within time limit of one year fixed as a part and parcel of the procedure evolved by the employer not under any statutory rules but merely by way of executive instructions. Even when there are provisions of law consideration is made as to whether the provision is mandatory or directory. Here is a case in which there is no statutory rule, what to talk of mandatory or directory rule, and, therefore, such a time limit fixed as a part of the procedure through executive instructions adopted by the Corporation cannot be a fate accompli for all times to come against the ward of deceased employee who seeks appointment on compassionate ground at the very threshold of his career immediately after passing SSC Examination

and the fact remains that at the time when he attained majority, he was a student. The decision of the Corporation to outrightly reject the petitioner's application seeking appointment on compassionate grounds in the facts of the present case cannot be held to be justified."

Learned advocate Mr. Tanna has also relied upon the decision of the apex court in case of Smt. T.K. Meenakshi and another versus Steel Authority of India Ltd. and others reported in 2000 AIR SCW 1745. In the said decision, the apex court has considered the question of compassionate appointment. Said decision of the apex court is also on the question of giving benefit of compassionate appointment. The apex court has considered the sudden jerk in the family by reason of the death of the bread earner. It has been observed that such sudden jerk can only be absorbed by some lump sum amount being made available to the family. This is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the bread earner and insecurity thereafter reigns and it is at that juncture if some lump sum amount is made available with a compassionate appointment, the grief stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the bread earner but that would undoubtedly bring some solace to the situation. In paragraph 17 of the judgment, it has been observed by the court as under:

"Moreover, compassionate appointment cannot be refused since the Tripartite Agreement expressly preserves the earlier circular to the effect that any benefit conferred by the earlier circular shall continue to be effective and the earlier rules as a matter of fact were not prohibitive of such compassionate appointments but lend affirmation to such appointments. "

In para 8 and 9 of the judgment, it has also been observed as under:

"8. The employer being Steel Authority of India, admittedly, an authority within the meaning of Article 12 has thus an obligation to act in terms of the avowed objective of social and economic justice as enshrined in the Constitution but has the authority in the facts of the matters under the consideration acted like a model and ideal employer- It is in this factual

backdrop, the issue needs an answer as to whether we have been able to obtain the benefit of constitutional philosophy of social and economic justice or not. Have the lofty ideals which the founding fathers placed before us any effect in our daily life- the answer cannot however but be in the negative- what happens to the constitutional philosophy as is available in the Constitution itself, which we ourselves have so fondly conferred on to ourselves. The socialistic pattern of society as envisaged in the Constitution has to be attributed its full meaning. A person dies while taking the wife to a hospital and the cry of the lady for bare subsistence would go unheeded on certain technicality. The bread earner is no longer available and prayer for compassionate appointment would be denied as it is likely to open a Pandora's box. This is the resultant effect of our entry into the new millennium. Can the law courts be a mute spectator in the matter of denial of such a relief to the horrendous sufferings of an employee's family by reason of the death of the bread earner. It is in this context this court's observations in Dharwad Dist PWD Literate Daily Wage EMPloyees Assn. v. State of Karnataka [1990] 2 SCC 396:[AIR 1990 SC 883:1990 Lab IC 625) seem to be rather apposite. This Court upon consideration of Randhir Singh v. Union of India (daily rated casual labour employed under P & T Department through Bharatiya Dak Tar Mazdoor Manch v. Union of India (1988) / SCC 122:(AIR 1987 SC 2342 : 1988 Lab IC 37) as also SURinder SINGH v. Engineer in chief (1986) 1 SCC 639:(AIR 1986 SC 584:1986 Lab IC 35) and DS Nakara v. Union of India (1983) 1 SCC 305:(AIR 1983 SC 130:1983 Lab IC 1) observed in paragraph 14 and 15 as below:

- '14. We would like to point out that the
philosolhy of this court as evolved in
the cases we have referred to above is
not that of the court but is ingrained in
the Constitution as one of the basic
aspects and if there was any doubt on
this there is no room for that after the
Preamble has been amended and the Forty
second Amendment has declared the
Republic to be a socialistic one. The
judgments, therefore, do nothing more
than highlight one aspect of the

constitutional philosophy and make an attempt to give the philosophy a reality of flesh and blood.

15. Jawaharlal Nehru, the first Prime Minister of this Republic, while dreaming of elevating the lot of the common man of this country once stated:

'Our final aim can only be a classless society with equal economic justice and opportunity to all, a society organized on a planned basis for the raising of man kind to higher material and cultural levels. Everything that comes in the way will have to be removed gently, if possible, forcibly if necessary, and there seems to be little doubt that coercion will often be necessary.'

These were his prophetic words about three decades back. More than a quarter of century has run our since he left us but there has yet been no percolation in adequate dose of the benefits the constitutional philosophy stands for to the lower strata of society. Tolstoy wrote:

'The abolition of slavery has gone on for a long time. Rome abolished slavery. America abolished it and we did but only the words were abolished, not the thing.'

Perhaps what Tolstoy wrote about abolition of slavery in a large sense applies to what we have done to the constitutional ethos. It has still remained on paper and is contained in the book. The benefits have not yet reached the common man. What Swami Vivekananda wrote in a different context may perhaps help a quicker implementation of the goal to bring about the overdue changes for transforming India in a positive way and for transforming India in a positive way

and in fulfilling the dreams of the Constitution fathers. These were the words of the Swami:

'It is imperative that all this various various yogas should be carried out in practice. Mere theories about them will not do any good. First we have to hear about them, then we have to think about them. We have to reason the thoughts out, impress them on our minds and meditate on them; realise them, until at last they become our whole life. No longer will religion remain a bundle of ideas or theories or an intellectual assent; it will enter into our very self. By means of an intellectual assent, we may today subscribe to many foolish things, and change our minds altogether tomorrow. But true religion is realisation; not talk, nor doctrine, nor theories, however beautiful they may be. It is being and becoming nor hearing or acknowledging. It is the whole soul's becoming changes into what it believe. That is religion.'

9. As a matter of fact, the constitutional philosophy should be allowed to become a part of every man's life in this country and then only the Constitution can reach every one and the ideals of the Constitutional framers would be achieved since the people would be nearer the goal set by the Constitution- an ideal situation but a far cry presently. "

#. In light of the aforesaid observations of this Court in identical case [Coram : S.D. Shah, J.] where the circular dated 4th July, 1988 has been rightly interpreted and therefore, order passed by the Respondent No.3 dated 29th January, 1992 denying the benefit of compassionate appointment to the petitioner only on technical ground and on wrong interpretation of the Government Resolution dated 4th July, 1988 that the

father of the petitioner has died prior to 4th July, 1988, i.e. on 18th September, 1985, therefore, the decision of the respondent authority that petitioner is not entitled to such benefit, itself is arbitrary and contrary to Government Resolution. In fact, the petitioner is entitled to compassionate appointment on the basis of very circular dated 4th July, 1988 as the father of the petitioner has died within period of 5 years from the date 4th July, 1988. Therefore, according to my opinion, the petitioner is entitled to the compassionate appointment and case of the petitioner has been illegally rejected by the respondent authority and therefore, order dated 29th January, 1992 is required to be quashed and set aside.

#. I have considered the observations made by this Court in reported decision in 1995 (2) GLH page 546 and 1998 (1) GCD page 306 and the Apex Court decision reported in 2000 AIR Supreme Court Weekly 1745 and therefore, after considering aforesaid observations of Apex Court, according to my opinion, the petitioner is entitled to compassionate appointment and therefore, following order is passed.

#. Normally this Court cannot pass the order of directing to the respondents to give appointment to the petitioner. But looking to the peculiar facts of the case and father of the petitioner died on 18th September, 1985 and his claim of compassionate appointment has been rejected on 29th January, 1992 and the petition has been filed in the year 1993, remained pending before this Court for seven years and therefore now there is no meaning or no purpose would be served in giving direction to the respondents to consider the case of the petitioner in light of the aforesaid observations made by this Court as well as Apex Court. Considering the mental agony of the petitioner who remained out of job for about more than 8 years because of wrong interpretation of the respondents in respect of the Government Resolution dated 4th July, 1988 on account of illegal decision taken by the respondents inspite of the fact that very circular has been examined by this Court in connection with very same respondents and passed order on 4th July, 1992. It is quite surprising to note that even though, meanwhile during the pendency of the present petition, the case of the petitioner is not considered by the respondents. On the contrary, it was the duty of the respondent authority to consider the case of the petitioner in light of the observations made by this Court in order dated 4th July, 1992. Therefore it is necessary to note that at the time of issuing notice by this Court, this Court has issued a

clear direction to the respondents to keep one post of Junior Clerk vacant in the respondent No.3 and the main object for directing the respondents to keep one post of Junior Clerk vacant was to see that the petitioner must get appointment, for which, he was entitled to such benefit since the death of the father of the petitioner but such benefit is arbitrarily and illegally denied and the petitioner has been deprived of his legal right. In such peculiar situation and circumstances, it is the duty of the Court to see that the petitioner may get the result of the legal right which has been wrongly denied to the petitioner. Therefore, considering all these aspects and in view of discussion as aforesaid, present petition is required to be allowed and the same is allowed accordingly. In the result, the respondents or their delegate in that regard are directed to appoint the petitioner SHRI INDRAPAL SINGH P. CHAUHAN on the post of Junior Clerk or on the post to which he is found to be eligible to the appointment within period of one month from the date of receiving certified copy of this order. Rule is made absolute to the extent indicated hereinabove. In view of the peculiar facts and circumstances of the present case, the petitioner is entitled to cost of this petition which is quantified at Rs.2,000/- [Rupees Two Thousand only] and the same shall be paid to the petitioner along with the appointment order.

Date : 17-11-2000 [H.K.Rathod, J.]

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